Koh Kien Hooi & Ors v Kepong Industrial Park Sdn Bhd

HIGH COURT (KUALA LUMPUR) — CIVIL ACTION NO WA-22NCvC-350–05 OF 2021
MOHD ARIEF JC
23 MAY 2022

Civil Procedure — Transfer of action — High Court to sessions court — Plaintiffs sued defendant for failure to deliver vacant possession — Plaintiffs sought separate amounts below RM1m — Whether action should be transferred to sessions court — Whether filing of action in High Court was abuse of process — Whether plaintiffs would suffer prejudice — Rules of Court 2012 O 15 r 4, O 57 & O 59 r 22(1)

The plaintiffs filed an action against the defendant in the High Court due to the defendant's failure to deliver vacant possession according to the time frame provided for under each of the sale and purchase agreements and under the Housing Development (Control and Licensing) Act 1966. Each of the plaintiff was seeking separate specific amounts below the sum of RM1m against the defendant. The late delivery claim for their private property and common property, interest payable and the date of vacant possession for each of the plaintiff were different. Based on this fact, the defendant had applied to transfer the case to the sessions court pursuant to O 57 of the Rules of Court 2012 ('the ROC') ('the defendant's application'). The question that arose in the present case was whether this matter should appropriately be heard before the sessions court.

Held, allowing the defendant's application with no order as to costs:

(1) The causes of action of each of the plaintiffs remained separate from one another. The claims were only joined under O 15 r 4 of the ROC for convenience and it would be wrong to collate them together to determine whether the jurisdiction of the sessions court was exceeded or otherwise. The court below was empowered and was not precluded from hearing any claims that had been consolidated or joined into a single suit under O 15 r 4 of the ROC. The ROC was applicable to both the sessions court and the High Court. The court further found that the claims fell within the jurisdiction of the sessions court and should have been filed in the said court because none of the claims exceeded RM1m and the claims did not fall within those areas where legislation had mandated to be heard and disposed of in the High Court. It was therefore an abuse of the process of the court, for the plaintiffs to bypass the jurisdiction of the sessions court and initiate proceedings directly in the High Court. That

was contrary to the intention of the Legislature and should not be condoned. The court retained an inherent jurisdiction to prevent abuse of process by litigants (see paras 25–27, 32 & 35).

(2) The court found that if the suit had been instituted appropriately in the sessions court, then the filing fees and any potential costs that may be faced by the defendant would be lower compared to a claim in the High Court. The defendant was entitled to these benefits that had been specifically provided for under O 59 r 22(1) of the ROC, the appendix thereto and the table of fees in Appendix B1 to Appendix B2 of the ROC. To take these rights away from the defendant and to force it to be subjected to higher costs and higher filing fees would be wrong. The legitimate interests and rights of the defendant must also be adequately recognized and given effect (see para 39).

(3) The court did not find that the plaintiffs would suffer any prejudice from hearing their claims before the sessions court. The learned sessions court judges were well trained and should be respected for their abilities to hear disputes that fell within their jurisdictional limits. To take away these disputes was an affront not only to the court process but also disrespected the learned sessions court judges. The advocates should be warned and directed to ensure that these jurisdictional rules were respected and complied with. It would not be fair in the circumstances of this case to allow the plaintiffs to ignore the sessions court and to allow them to file their claim directly in the High Court. They and their counsel should have complied with the jurisdictional provisos that had been adequately laid down by Parliament (see para 40).

[Bahasa Malaysia summary

Plaintif-plaintif memfailkan tindakan terhadap defendan di Mahkamah Tinggi di atas kegagalan defendan menyerahkan milikan kosong mengikut tempoh masa yang diperuntukkan di bawah setiap perjanjian jual beli dan di bawah Akta Pemajuan Perumahan (Kawalan dan Pelesenan) 1966. Setiap daripada plaintif menuntut jumlah khusus yang berasingan di bawah jumlah RM1 juta terhadap defendan. Tuntutan penyerahan lewat bagi harta persendirian dan harta bersama mereka, faedah yang perlu dibayar dan tarikh pemilikan kosong bagi setiap plaintif adalah berbeza. Berdasarkan fakta ini, defendan telah memohon untuk memindahkan kes ini ke mahkamah sesyen menurut A 57 Kaedah-Kaedah Mahkamah 2012 ('KKM 2012') ('permohonan defendan'). Persoalan yang timbul dalam kes ini ialah sama ada perkara ini wajar didengar di hadapan mahkamah sesyen.

Diputuskan, membenarkan permohonan defendan tanpa perintah berkaitan kos:

(1) Kausa-kausa tindakan setiap plaintif kekal berasingan antara satu sama

lain. Tuntutan-tuntutan tersebut hanya disatukan di bawah A 15 k 4 KKM 2012 untuk kemudahan dan adalah salah untuk mengambil kira semuanya bersama-sama untuk menentukan sama ada ianya telah melebihi bidang kuasa mahkamah sesyen atau sebaliknya. Mahkamah bawahan telah diberi kuasa dan tidak dihalang daripada mendengar apa-apa tuntutan yang telah disatukan atau digabungkan menjadi satu saman di bawah A 15 k 4 KKM 2012. Kaedah-Kaedah Mahkamah 2012 terpakai untuk kedua-dua mahkamah sesyen dan Mahkamah Tinggi. Mahkamah selanjutnya mendapati bahawa tuntutan-tuntutan tersebut tertakluk dalam bidang kuasa mahkamah sesyen dan sepatutnya difailkan di mahkamah tersebut kerana tiada tuntutan yang melebihi RM1 juta dan tuntutan-tuntutan tersebut tidak termasuk dalam keadaan di mana undang-undang telah memberi mandat untuk didengar dan dilupuskan di Mahkamah Tinggi. Oleh itu, adalah satu penyalahgunaan proses mahkamah, untuk plaintif-plaintif memintas bidang kuasa mahkamah sesyen dan memulakan prosiding terus di Mahkamah Tinggi. Tindakan tersebut adalah bertentangan dengan hasrat badan perundangan dan tidak boleh dibiarkan. Mahkamah mempunyai bidang kuasa sedia ada untuk mencegah penyalahgunaan proses oleh pihak litigasi (lihat perenggan 25–27, 32 & 35).

(2) Mahkamah mendapati sekiranya tindakan-tindakan tersebut dimulakan dengan sewajarnya di mahkamah sesyen, maka yuran pemfailan dan apa-apa kos yang mungkin dihadapi oleh defendan adalah lebih rendah berbanding dengan tuntutan di Mahkamah Tinggi. Defendan berhak mendapat manfaat ini yang telah diperuntukkan secara khusus di bawah A 59 k 22(1) KKM 2012, lampirannya dan jadual bayaran dalam Lampiran B1 hingga Lampiran B2 KKM 2012. Untuk mengambil hak ini daripada defendan dan memaksanya dikenakan kos yang lebih tinggi dan yuran pemfailan yang lebih tinggi adalah salah. Kepentingan dan hak defendan yang sah juga mesti diiktiraf dan diberi kesan secukupnya (lihat perenggan 39).

(3) Mahkamah tidak mendapati bahawa plaintif-plaintif akan mengalami apa-apa prejudis daripada mendengar tuntutan-tuntutan mereka di hadapan mahkamah sesyen. Hakim mahkamah sesyen yang bijaksana telah terlatih dengan baik dan harus dihormati kerana kebolehan mereka mendengar kes yang berada dalam had bidang kuasa mereka. Untuk mengambil kes ini daripada mereka adalah satu penghinaan bukan sahaja kepada proses mahkamah tetapi juga tidak menghormati hakim-hakim mahkamah sesyen yang bijaksana. Peguambela harus diberi amaran dan diarahkan untuk memastikan bahawa peraturan bidang kuasa ini perlu dihormati dan dipatuhi. Adalah tidak adil dalam keadaan kes ini untuk membenarkan plaintif-plaintif mengabaikan mahkamah sesyen dan membenarkan mereka memfailkan tuntutan mereka terus di Mahkamah Tinggi. Mereka dan peguam mereka sepatutnya mematuhi proviso

A bidang kuasa yang telah ditetapkan dengan secukupnya oleh Parlimen (lihat perenggan 40).]

Cases referred to

B *Ang Ming Lee & Ors v Menteri Kesejahteraan Bandar, Perumahan dan Kerajaan Tempatan & Anor and other appeals* [2020] 1 MLJ 281; [2020] 1 CLJ 162, FC (refd)

Asean Security Paper Mills Sdn Bhd v Mitsui Sumitomo Insurance (Malaysia) Bhd [2008] MLJU 251; [2008] MLJU 1090; [2008] 6 CLJ 1, FC (refd)

C *Del E Webb International Hotel Co v Hotel Merlin Penang Sdn Bhd* [1973] 1 MLJ 31b (refd)

Indah Desa Saujana Corp Sdn Bhd & Ors v James Foong Cheng Yuen, Judge, High Court Malaya & Anor [2008] 2 MLJ 11; [2008] 1 CLJ 651, CA (refd)

Kok Wee Kiat (Mrs) v Kuala Lumpur Stock Exchange Bhd & Ors [1977] 1 MLJ 109, FC (refd)

D *Lloyd v Google LLC* [2022] 1 All ER (Comm) 1107, SC (folld)

Markt & Co, Limited v Knight Steamship Company, Limited; Sale & Frazar v Knight Steamship Company, Limited [1910] 2 KB 1021, CA (refd)

Mohd Rafizi bin Ramli v Dato' Sri Dr Mohamad Salleh bin Ismail & Anor [2019] 6 MLJ 587; [2020] 1 CLJ 498, CA (folld)

E *Ng Kong Ling & Anor v Low Peck Lim & Ors* [2017] 4 MLJ 21, FC (refd)

Riviera Bay Resort & Condo Management Sdn Bhd v Sri Rimba Mentari Development Sdn Bhd [2003] 4 MLJ 40; [2003] 8 CLJ 720, HC (refd)

Thomas and others v Moore and others [1918] 1 KB 555, CA (refd)

F *UE E&C Sanjia (M) Sdn Bhd v Lee Jeng Yuh & Anor and another appeal* [2021] 6 MLJ 864; [2021] 10 CLJ 271, CA (refd)

United 1Borneo Hypermall Sdn Bhd v See Hong Cheen @ See Hong Chen [2021] MLJU 1665, HC (refd)

G **Legislation referred to**

Courts of Judicature Act 1964 ss 23, 24, Schedule, para 12

Housing Development (Control and Licensing) Act 1966

Rules of Court 2012 O 15 rr 4, 4(1)(a), 5, 12, O 57, O 57 r 1, O 59 r 22(1)

H Subordinate Court Rules 1980 (repealed by Rules of Court 2012) O 8 rr 4, 12

Subordinate Courts Act 1948 s 65

Woo Jiunn Jye (with Manpal Singh) (Zahir Ibrahim & Co) for the plaintiffs.

Christine Toh (with Cheong Koh Zhi) (Mah Weng Kwai & Assoc) for the defendant.

I

Mohd Arief JC:

INTRODUCTION

[1] I called the matter up for case management on 23 May 2022 and questioned parties whether this matter should appropriately be heard before the sessions court.

[2] The defendant agreeing to the same, applied orally for this court to exercise its power to transfer the proceedings to the sessions court under O 57 r 1 of the Rules of Court 2012.

[3] The plaintiffs unhappy with the said order, have since appealed to the Court of Appeal.

[4] The following paragraphs contain my reasons for exercising my powers under O 57 of the Rules of Court 2012 and under the inherent jurisdiction of this court to have the matter heard before the sessions court. I find that based on the disputes between the parties, this suit will be conveniently and fairly tried before the sessions court.

THE DISPUTE BETWEEN THE PLAINTIFFS AND THE DEFENDANT

[5] When I peruse the statement of claim by the 16 plaintiffs, it is apparent to me that the claims relate to the alleged failure by the defendant to deliver vacant possession according to the time frame provided for under each of the sale and purchase agreements and under the Housing Development (Control and Licensing) Act 1966.

[6] Each plaintiff had entered into separate agreements with the defendants on different dates and paid booking fees on different dates as seen in Table 1 that appears in the plaintiffs' statement of claim.

[7] I also note that each plaintiff is seeking separate specific amounts below the sum of RM1m against the defendant. The late delivery claim for their private property and common property, interest payable and the date of vacant possession for each plaintiff are different.

[8] If one looks at the claim, it is apparent that each of the plaintiff claims in Schedule 1 is for a sum less than RM1m and one even as low as RM28,000. For ease of convenience, I reproduce the aforesaid Table 1 of the plaintiffs' statement of claim:

JADUAL 1

	Ruangan A	Ruangan B	Ruangan C	Ruangan D	Ruangan E	Ruangan F	Ruangan G	Ruangan H	Ruangan I
No.	Nama	No. Kad Pengenalan	No. Unit	Tarikh Bayaran Tempahan	Harga Pembelian	Tarikh Milikan Kosong	Gantirugi Terlikuidasi Unit	Gantirugi Terlikuidasi Harta Bersama	Jumlah
1)	Koh Kien Hooi & Seow Li Li	660610-10-6843 640217-08-6294	B-15-03	27/07/2013	RM614,800.00	26/09/2020	RM223,914.87	RM44,782.97	**RM268,697.84**
2)	Lai Lan Fung (f) & Lai Boon Yong (f)	E3254164H E3770320D (Pasport Singapura)	B-06-06	17/08/2013	RM665,800.00	29/09/2020	RM238,669.29	RM47,733.45	**RM286,402.74**
3)	Quek Sze Chiang & Goh Lee Hong	881118-04-5857 840405-01-5860	D-24-02	22/01/2016	RM788,800.00	26/08/2020	RM90,936.66	RM18,187.33	**RM109,123.99**
4)	Nor Azizah Binti Mohzan	800227-14-5366	B-GF-04	22/09/2016	RM481,800.00	17/10/2020	RM23,468.23	RM4,693.65	**RM28,161.88**
5)	Chow Kar Lok & Chow Tang Seng	900505-66-5002 920101-01-6469	D-10-09	11/06/2016	RM630,800.00	21/08/2020	RM48,526.60	RM9,705.32	**RM58,231.92**
6)	Liew Sook Yee & Ng Thien Sung	900802-14-6380 881028-49-5299	D-08-03	05/04/2015	RM594,800.00	08/09/2020	RM116,155.41	RM23,231.08	**RM139,386.49**
7)	Mohan A/L Gopal	840413-08-6087	D-12-14	24/08/2015	RM453,800.00	03/09/2020	RM71,089.90	RM14,217.98	**RM85,307.88**
8)	Yeoh Jaw Ken	930119-14-5057	D-08-07	24/05/2015	RM466,800.00	21/08/2020	RM84,892.32	RM16,978.46	**RM101,870.78**
9)	Maggie Lim	850504-01-5128	D-17-13	28/07/2015	RM559,800.00	21/08/2020	RM91,836.28	RM18,367.25	**RM110,203.53 (-RM16,410.58)**
10)	Ong Tze Hong & Tham Yen Kheng	771212-10-5783 800210-08-5416	B-12-12	21/07/2013	RM482,800.00	21/08/2020	RM176,630.93	RM35,326.18	**RM211,957.11**

REASONS WHY THE MATTER SHOULD BE HEARD IN THE SESSIONS COURT

Each plaintiff's cause of action falls within the jurisdiction of the sessions court

[9] I find that each plaintiff has a separate cause of action with their separate remedy claimed against the defendant. Each of these claims, although similar in nature and law, is based on separate agreements. The liability of the parties is not joint and several in any form whatsoever and are independent of one another based on each agreement between the plaintiffs and the defendant.

[10] I find that as each plaintiff's claim falls within the threshold of the civil jurisdiction of the sessions court, this matter should be heard by the sessions court.

[11] It must be noted that the sessions court's jurisdiction was increased from RM250,000 to RM1m under the Subordinate Courts (Amendment) Act 2010. The sessions court has also been given powers to grant an injunction and make a declaration in respect of any action that falls within its jurisdiction.

[12] The plaintiffs' counsel contends that he is entitled to have the matter heard in the High Court as they have decided to consolidate the action into a single suit according to O 15 r 4 of the Rules of Court 2012. He contends that

the reason for this consolidation is to enable: (i) the same common question of law or fact that appears in each separate claim to be heard once and for all in a single suit; and (ii) that the rights to relief arises out of the same series of transaction ie, similar sale and purchase agreements with the defendant. Therefore, he argues that this entitles the plaintiffs to collate the total sum claim against the defendant which exceeds the sum of RM1m thus failing exclusively within the jurisdiction of this court.

[13] I have no qualms about the plaintiffs' consolidation and utilization of O 15 r 4 in filling a single claim against the defendant. This however does not mean that the 'amount in dispute or the value of the subject matter' exceeds RM1m. Despite the consolidation in a single suit, each of the plaintiffs' claims constitutes a separate cause of action against the defendant, each with its subject matter and each with its remedy claimable against the defendant. The defendant is entitled to the same right against each defendant as if the claim was brought separately against it.

[14] I refer to the decision of the English Court of Appeal in *Markt & Co, Limited v Knight Steamship Company, Limited; Sale & Frazar v Knight Steamship Company, Limited* [1910] 2 KB 1021, where Fletcher Moulton LJ held:

> The rule reads as follows: 'All persona may be joined in one action as plaintiffs in whom any right to relief in respect of or arising out of the same transaction or aeries of transactions is alleged to exist, whether jointly, severally, or in the alternative, where, if such persons brought separate actions, any common question of law or fact would arise.' There follows a proviso giving to the Court a power of modifying the procedure if it shall appear that such joinder may embarrass or delay the trial of the action. Judgment may be given for such of the plaintiffs as succeed, and the defendant is protected with regard to the costs which relate to the plaintiffs who are unsuccessful. This makes it clear that (subject to the control of the Court) persons can unite as plaintiffs though seeking individual relief in cases where the investigation would to a great extent be identical in each individual case. The policy of the rule is to avoid needless expense where it can be done without doing injustice to any one. And it carries out its object. No plaintiff can complain, for he cannot be made a plaintiff without his consent, so that if he avails himself of the rule it is because he desires to do so. *The defendant has no cause to complain, because the plaintiffs are liable for his costs if he succeeds, and he has just the same rights in the action against each plaintiff as if a separate action had been brought against him by that plaintiff.* No doubt there are cases in which he might be placed at a disadvantage by reason of the operation of our laws of evidence, but in such cases the Court can protect him from such an application of the rule as would work injustice.

[15] One cannot forget that the cause of action by each plaintiff remains independent and each plaintiff is entitled to bring separate claims against the defendant. The fact that the claims are joined in one suit does not change the

character of the claim and does not create an overall larger claim that falls outside of the jurisdiction of the sessions court. It is wrong for the plaintiffs to contend that this court should look at the total amount claimed and find that this exceeds the jurisdiction of the sessions court.

[16] As I have stated earlier, each of the claims does not exceed RM1m and does not belong to any of the categories of cases that fall within the exclusive jurisdiction of the High Court under ss 23 and 24 of the Courts of Judicature Act 1964 (Revised 1972).

[17] I opine that counsel for the plaintiffs may have misread the operating words that appear in O 15 r 4(1)(a) of the Rules of Court 2012 that allows for the joinder of plaintiffs without leave of court. The said proviso states:

> (a) if a separate cause of action were brought by or against each of them, as the case may be, some common question of law or fact would arise in all the actions.

[18] In other words, these claims are independent causes of actions that could have been filed separately and remain independent from one another. The only reason that the rules allow for the joinder of the plaintiffs, is that as there are common issues of law or facts, then it would be convenient and costs efficient that the claims are heard in a single court. See *Del E Webb International Hotel Co v Hotel Merlin Penang Sdn Bhd* [1973] 1 MLJ 31b. The joinder does not detract that these remain separate causes of action for each plaintiff.

[19] The court hearing an action where parties are joined under O 15 r 4, may even order separate trials for each cause of action under O 15 r 5 of the Rules of Court. See *Kok Wee Kiat (Mrs) v Kuala Lumpur Stock Exchange Bhd & Ors* [1977] 1 MLJ 109 the decision of Pickford LJ in *Thomas and others v Moore and others* [1918] 1 KB 555.

[20] I also stress that in this case, even if the plaintiffs were to succeed in its claim against the defendant, each claim will have to be assessed separately. For each plaintiff, this court or even the sessions court will have to assess the alleged late delivery chargeable based on the date on which the deposit was paid by each plaintiff and on the date on which vacant possession had to be delivered to each plaintiff. These will depend on the facts of each case. Although the claims involve the same issues of law, they remain separate and distinct and are not joint and several in any way whatsoever.

[21] In the event, that judgment is entered for the plaintiffs as alleged, the court has to order a specific amount to be paid by defendant to each plaintiff separately. The judgment should not be collated together. This is even reflected

in Table 1 of the statement of claim and the prayers sought therein. Even the interest payable to each plaintiff is calculated separately in the statement of claim.

[22] I take guidance from a recent decision of the UK Supreme Court in *Lloyd v Google LLC* [2022] 1 All ER (Comm) 1107. Although the case concerns the right to institute a representative action, I find that the jurisprudence of the UK Supreme Court on the issue of the mechanism in which damages ought to be calculated or ascertained for each plaintiff is illuminating and helpful in my task of determining whether in a joined action the causes of action remain separate or otherwise.

[23] Lord Leggatt on this issue held:

> [80] Finally, as already discussed, it is not a bar to a representative claim that each represented person has in law a separate cause of action nor that the relief claimed consists of or includes damages or some other monetary relief. The potential for claiming damages in a representative action is, however, limited by the nature of the remedy of damages at common law. *What limits the scope for claiming damages in representative proceedings is the compensatory principle on which damages for a civil wrong are awarded with the object of putting the claimant — as an individual — in the same position, as best money can do it, as if the wrong had not occurred. In the ordinary course, this necessitates an individualised assessment which raises no common issue and cannot fairly or effectively be carried out without the participation in the proceedings of the individuals concerned. A representative action is therefore not a suitable vehicle for such an exercise.*
>
> [81] *In cases where damages would require individual assessment, there may nevertheless be advantages in terms of justice and efficiency in adopting a bifurcated process — as was done, for example, in the Prudential case — whereby common issues of law or fact are decided through a representative claim, leaving any issues which require individual determination — whether they relate to liability or the amount of damages — to be dealt with at a subsequent stage of the proceedings.* In *Prudential* [1979] 3 All ER 507; [1981] Ch 229, Vinelott J expressed the view (obiter) that time would continue to run for the purpose of limitation until individual claims for damages were brought by the persons represented; see also the dicta of Fletcher Moulton LJ in *Markt* [1910] 2 KB 1021; [1908–10] All ER Rep Ext 1031, referred to at para [44] above. The court in *Prudential* did not have cited to it, however, the decision of the Court of Appeal in *Moon v Atherton* [1972] 3 All ER 145 ; [1972] 2 QB 435. In that case a represented person applied to be substituted for the named claimant after the limitation period had expired when the claimant (and all the other represented persons) no longer wished to continue the action. The Court of Appeal, in allowing the substitution, held that the defendant was not thereby deprived of a limitation defence, as for the purpose of limitation the represented person was already a party to the action, albeit not a 'full' party. It might be clearer to say that, although the represented person did not become a 'party' until substituted as the claimant, an action was brought within the meaning of the statute of limitation by that person when the representative claim was initiated. Such an analysis has been

adopted in Australia, including by the New South Wales Court of Appeal in *Fostif Pty Ltd v Campbells Cash & Carry Pty Ltd* [2005] NSWCA 83; (2005) 63 NSWLR 203, and by the New Zealand Supreme Court in *Credit Suisse Private Equity LLC v Houghton* [2014] NZSC 37; [2014] 1 NZLR 541.

> [82] There is no reason why damages or other monetary remedies cannot be claimed in a representative action if the entitlement can be calculated on a basis that is common to all the members of the class. Counsel for the claimant, Hugh Tomlinson QC, gave the example of a claim alleging that every member of the class was wrongly charged a fixed fee; another example might be a claim alleging that all the class members acquired the same product with the same defect which reduced its value by the same amount. In such cases the defendant's monetary liability could be determined as a common issue and no individualised assessment would be needed. The same is true where loss suffered by the class as a whole can be calculated without reference to the losses suffered by individual class members — as in the cases mentioned at para [53] above. Such an assessment of loss on a global basis is sometimes described as a 'top down' approach, in contrast to a 'bottom up' approach of assessing a sum which each member of the class is individually entitled to recover.

[24] I am aware that each of the defendants is also seeking declaratory orders concerning the delivery date of vacant possession of each unit purchased by them under the Housing Development (Control and Licensing) Act 1966. This is in addition to the claim for specific sums contained in the Table produced earlier. However, this does not preclude the case from being heard before the sessions court. The sessions court now has powers to make declaratory orders in any claim that falls within its jurisdiction as provided for in s 65 of the Subordinate Courts Act 1948 (Revised 1972) (Act 92). This is more so when one considers that the declaratory orders sought only relate to each contractual claim and the claim that arises from the Housing Development (Control and Licensing) Act 1966. These claims need not be filed in the High Court and do not fall within the subject matters that must be filed in the High Court as seen in s 23 of the Courts of Judicature Act. These claims are also not claims to enforce any form of trust as explained by the Federal Court in *Ng Kong Ling & Anor v Low Peck Lim & Ors* [2017] 4 MLJ 21.

[25] Based on the above, I find that the causes of action of each of the plaintiffs remain separate from one another. The claims are only joined under O 15 r 4 for convenience and it would be wrong to collate them together to determine whether the jurisdiction of the sessions court is exceeded or otherwise. I also find that the claims fall within the jurisdiction of the sessions court and should have been filed in the said court. I repeat that I find that the plaintiffs' claims fall within the jurisdiction of the sessions court as none of them exceeds RM1m and does not fall within those areas where legislation has mandated to be heard and disposed of in the High Court.

[26] Therefore, as the claims by each plaintiff fall within the jurisdiction of the sessions court, I opine that this claim should be heard in the said court. The court below is empowered and is not precluded from hearing any claims that have been consolidated or joined into a single suit under O 15 r 4 of the Rules of Court 2012. The intention of the Legislature in increasing the jurisdiction of the sessions court from RM250,000 to RM1m and to provide powers to make declaratory and even injunction orders now must be respected and complied with. Otherwise, claimants may simply disregard the lower courts and file all sorts of claims before the High Court. I cannot ignore the actions of the plaintiffs in usurping the clear intention of the Legislature to have these types of civil claims heard in the lower courts.

[27] I also find that the fact that this claim involves a joinder of action under O 15 r 4 of the Rules of Court 2012, does not mean that the claim cannot be filed in the sessions court. The Rules of Court 2012 apply to both the sessions court and the High Court. This even applies to representative action that falls under O 15 r 12. These rules even appear in the previous O 8 rr 4 and 12 of the previous Subordinate Court Rules 1980. I see no valid reason why the jurisdiction of the sessions court was ignored by the plaintiffs and their learned counsel.

Attempt to bypass the jurisdiction of the sessions court is an abuse of process

[28] I also find that the filing of the writ and the statement of claim in the High Court constitutes an abuse of process. Our administration of justice is undertaken not only through our superior courts, but also are undertaken through the lower courts. To disregard the appropriate layering of the civil justice system, as has been undertaken by the plaintiffs, I find is abusive and should be stopped.

[29] I accept that the High Court has jurisdiction to hear claims even though they fall within the jurisdiction of the subordinate courts. However, the practice of bypassing the lower courts should be frowned upon and should be discouraged. Unless there are cogent reasons why the claim should be instituted in the High Court, eg when the issues are complex or the law is not clear or settled, then for most kinds of cases, litigants should file the claim following the jurisdiction that is provided for in the Subordinate Courts Act and the Courts of Judicature Act.

[30] More so, when a claim that is initiated in the lower courts, the appeal may end at the Court of Appeal. This is to be contrasted to a claim that is started at the High Court where the appeal may end at the Federal Court. It is wrong for the litigants to bypass these jurisdictional limits that have been laid down by statutes by collating claims together in a single suit, to create a false

impression that the subject matter of the claim exceeds the sum of RM1m when in actual reality, each claim does not exceed the said amount.

[31] I am further guided by the decision of the Court of Appeal in *Mohd Rafizi bin Ramli v Dato' Sri Dr Mohamad Salleh bin Ismail & Anor* [2019] 6 MLJ 587; [2020] 1 CLJ 498, although stated in obiter, where Hamid Sultan Abu Backer JCA stated:

> [7] The High Court in all defamation action should at the case management stage itself direct the matter to be transferred to the sub-courts, if the quantum on the subject matter of dispute will be within subordinate court limit. (See O 57 of the Rules of Court 2012). *Abusing High Court process in not filing matters in the sub-courts, when the sub-court has jurisdiction to deal with the matter must be taken by the High Court seriously. Trial courts should warn counsels that costs order may be made against counsel personally if ultimately the courts' jurisdiction has been abused.*

[32] It is worth reminding that this court retains an inherent jurisdiction to prevent abuse of process by litigants. It is not for the litigants or their counsel to circumvent rules that are put in place by the Legislature, especially that of jurisdiction. Otherwise, we might as well revoke the sessions courts and the magistrate courts and have all claims heard in the High Court. I refer to the decision of the Court of Appeal in *Indah Desa Saujana Corp Sdn Bhd & Ors v James Foong Cheng Yuen, Judge, High Court Malaya & Anor* [2008] 2 MLJ 11; [2008] 1 CLJ 651, where Low Hop Bing JCA held:

> [80] The court has an inherent jurisdiction to prevent an abuse of its process: *Raja Zainal Abidin Raja Hj Tachik & Ors v British-American Life & General Insurance Bhd.* [1993] 3 MLJ 16; [1993] 3 CLJ 606 (SC).
>
> [81] Illustrations of an abuse of the process of the court include:
>
> (a) an intention to embarass the defendants: *Ansa Teknik (M) Sdn Bhd v Cygal Sdn Bhd* [1989] 2 MLJ 423; [1989] 1 LNS 26; or
>
> (b) where the process of the court has not been used in a bona fide manner and has been abused: *Hadi Hassan v Suria Records Sdn Bhd & Ors* [2005] 3 MLJ 522; [2004] 8 CLJ 225.
>
> [82] The categories of abuse of process of the court are never closed and will certainly proliferate pursuant to the myriad of circumstances available from the factual matrix found in each particular case.
>
> [83] In *Gabriel Peter & Partners (suing as a firm) v Wee Chong Jin* [1988] 1 SLR 374 at p 384, the Singapore Court of Appeal explained the scope of 'an abuse of the process of the court' under O 18 r 19(1)(d) which is in pari materia with ours. The term has been given a wide interpretation by the courts and includes considerations of public policy and the interests of justice. It signifies that the process of the court must be used bona fide and properly and must not be abused. On the facts before us, the defendants have established an abuse of the process of the court.

[33] I also refer to the decision of the Federal Court in *Asean Security Paper Mills Sdn Bhd v Mitsui Sumitomo Insurance (Malaysia) Bhd* [2008] MLJU 251; [2008] MLJU 1090; [2008] 6 CLJ 1 where Zaki Tun Azmi PCA (as he then was) held:

> [36] What then is the meaning of inherent jurisdiction? According to the *Concise Oxford Dictionary*, 'inherent' means 'existing in something, esp as a permanent or characteristic attribute'. *In the context of the law, that inherent jurisdiction is deemed to be part of the court's power to do all things reasonably necessary to ensure fair administration of justice within its jurisdiction subject to valid existing laws including the Constitution. In other words, that inherent power is found within the very nature of a court of law, unlike power conferred by statute*.
>
> [37] The *Halsbury's Laws of England* (4th Ed) in Vol 37 at para 12 refers to 'inherent jurisdiction' as follows: In sum, it may be said that the inherent jurisdiction of the court is a virile and viable doctrine, and has been defined as being the reserve or fund of powers, a residual source of powers, which the court may draw upon as necessary whenever it is just or equitable to do so, in particular to ensure the observance of the due process of law, to prevent vexation or oppression, to do justice between the parties and to secure a fair trial between them.
>
> [38] In *Bremer Vulkan v South India Shipping* [1981] 1 All ER 289 at 295, Lord Diplock speaking on the subject of dismissing a pending action for one of prosecution said: The power to dismiss a pending action for want of prosecution in cases where to allow the action to continue would involve a substantial risk that justice could not be done is thus properly described as an 'inherent power' the exercise of which is within the 'inherent jurisdiction' of the High Court. It would I think be conducive to legal clarity if the use of these two expressions were confined to the doing by the court of acts which it needs must have power to do in order to maintain its character as a court of justice. (Emphasis added.)

[34] This can also be seen in the decision of the Low Hop Bing J (as he then was) in *Riviera Bay Resort & Condo Management Sdn Bhd v Sri Rimba Mentari Development Sdn Bhd* [2003] 4 MLJ 40; [2003] 8 CLJ 720 where he relied on para 12 in the Schedule to the Courts of Judicature Act 1964 and stated:

> In my view, the jurisdiction of the High Court in making an order of transfer and consolidation of proceedings in subordinate courts has been expressly provided for in para 12, particularly the words *'Power to transfer any proceedings* ... to or from any subordinate court, and in the case of transfer to or from a subordinate court to give any *directions as to the further conduct thereof*. (Emphasis added.)
>
> There is no doubt in my mind that the words 'any proceedings' in para 12 are sufficiently wide to cover the power to order the transfer of the following proceedings:
>
> (a) from the High Court to any subordinate court and *vice versa*;
>
> (b) from any sessions court to any sessions court and *vice versa*; and
>
> (c) from any sessions court to any magistrate's court and *vice versa*.
>
> I agree with the judgment of Mohd Hishamuddin J in *Kee Choi Heng v Ketua Polis*

Daerah Kuala Muda & Anor [1999] 2 MLJ 668; [1999] 2 CLJ 664 that under para 12 only the High Court has the power to transfer a civil case from a sessions court to a magistrate's court and *vice versa*.

[35] Therefore, I find that this suit should have been filed in the sessions court. The subject matter of each plaintiff's claim does not exceed RM1m. The law relating to this area is trite as laid down by the Federal Court in *Ang Ming Lee & Ors v Menteri Kesejahteraan Bandar, Perumahan dan Kerajaan Tempatan & Anor and other appeals* [2020] 1 MLJ 281; [2020] 1 CLJ 162 and the Court of Appeal in *UE E&C Sanjia (M) Sdn Bhd v Lee Jeng Yuh & Anor and another appeal* [2021] 6 MLJ 864; [2021] 10 CLJ 271. It is therefore an abuse of the process of court, for the plaintiffs to bypass the jurisdiction of the sessions court and initiate proceedings directly in the High Court. That is contrary to the intention of the Legislature and should not be condoned.

Unfair to the defendant — Costs and fees unnecessarily inflated

[36] There is another fundamental reason why I find that the bypassing of the sessions court is abusive. One must not forget that justice must not only be administered in the interest of the plaintiff but also that of the defendant.

[37] Such an approach could be seen in the decision of the High Court in *United 1Borneo Hypermall Sdn Bhd v See Hong Cheen @ See Hong Chen* [2021] MLJU 1665. I note that the court in that case was dealing with an application of transfer of proceedings from the sessions court to the High Court. Nonetheless, I find that the case is illustrative when dealing with the issue of fairness in dealing with the exercise of powers under O 57 r 1 of the Rules of Court 2012.

[38] In that case, Leonard David Shim JC (as he then was) held:

> [19] If a transfer of the sessions court case to the High Court is ordered, the defendant (Ng Kong Ghee) would lose an automatic right of appeal to the High Court from the sessions court but would need to seek leave to appeal from the High Court to the Court of Appeal under s 68(1)(a) of the Courts of Judicature Act 1964 ('the CJA 1964') as the claim in the sessions court (RM158,158.95) is less than RM250,000 threshold prescribed in s 68(1)(a) CJA 1964. In such event, the defendant (Ng Kong Ghee) will be prejudiced resulting in the loss of the statutory right to appeal against the decision of the sessions court as of right. On the other hand, the defendant (See Hong Cheen) will have an automatic right to appeal as the claim against him (RM1,205,600.31) far exceeds the RM250,000 threshold provided in s 68(1)(a) CJA 1964. This may have the effect of creating an uneven playing field and unfairness in so far as the defendant (Ng Kong Ghee) is concerned.
>
> [20] The importance of having a fair trial which includes a fair procedure and fair process to safeguard the legitimate interests of both parties can be seen in *Goi Ching Ang v Public Prosecutor* [1999] 1 MLJ 507 wherein the Federal Court affirmed that:

Fairness requires fair trial which, in turn, needs fair procedure. Fair process requires that the legitimate interests of both prosecution and the defence are adequately provided for.

[21] *Although the issues in Goi Ching Ang's case are criminal in nature, the principle of fairness enunciated by the Federal Court would apply to civil cases with equal force.* (Emphasis added.)

[39] I find that if this suit had been instituted appropriately in the sessions court, then the filing fees and any potential costs that may be faced by the defendant would be lower compared to a claim in the High Court. The defendant is entitled to these benefits that have been specifically provided for under O 59 r 22(1) of the Rules of Court 2012, the appendix thereto and the table of fees in Appendix B1 to Appendix B2 of the Rules of Court. To take these rights away from the defendant and to force it to be subjected to higher costs and higher filing fees would be wrong. The legitimate interests and rights of the defendant must also be adequately recognized and given effect.

[40] Finally, I do not find that the plaintiffs will suffer any prejudice from hearing their claims before the sessions court. Our learned sessions court judges are well trained and should be respected for their abilities to hear disputes that fall within their jurisdictional limits. To take away these disputes is an affront not only to the court process but also disrespects our learned sessions court judges. Our advocates should be warned and directed to ensure that these jurisdictional rules are respected and complied with. It would not be fair in the circumstances of this case to allow the plaintiffs to ignore the sessions court and to allow them to file their claim directly in the High Court. They and their counsel should have complied with the jurisdictional provisos that have been adequately laid down by Parliament.

ORDERS

[41] For the above reasons, I exercise my powers on the application of the defendant to have the matter transferred to the sessions court according to O 57 r 1 of the Rules of Court 2012 and under the inherent powers of the High Court, with no order as to costs.

Defendant's application allowed with no order as to costs.

Reported by Dzulqarnain Ab Fatar